

Nepal's Fragile Peace Process

I. OVERVIEW

A Maoist walk-out from government on 18 September 2007 and mainstream political parties' intransigence are threatening elections for Nepal's Constituent Assembly (CA) scheduled for 22 November. Although a compromise to bring the Maoists back on board is possible, the heightened tensions add to longstanding problems including weak political will, poor governance and security, and continued claims for representation by marginalised groups. The Maoists could contest elections from outside government but polls without their participation would be meaningless, and they retain the capacity to make the country ungovernable if they oppose the process. Critical elements of the 2006 peace deal, such as security sector reform, remain to be tackled, while implementation and monitoring of past agreements have been minimal. Primary responsibility for steering the process lies with the mainstream parties, which need to demonstrate coherence, commitment and a will to reform their own behaviour if lasting peace is to be established.

Parties have started emphasising the importance of the election, and increased signs of commitment from most have added momentum to a process which had been suffering from dangerous drift. At the same time, the formerly confident Maoists have shown increasing nervousness at facing the electorate. Maintaining a sense of purpose, especially through nationwide campaigning, will increase public confidence and leave less room for spoilers to manoeuvre. Opponents of the process, especially royalists alarmed at the growing republican consensus, are desperate to derail it but have a chance only if the major parties are weak and divided.

Several armed groups have vowed to disrupt the election; mid-September communal violence following the killing of a former vigilante leader left around two dozen dead and illustrated how easily a fragile situation can tilt into dangerous unrest. More serious violence is a real risk. An election postponement will only reduce such dangers if major parties agree on urgent, substantive steps to address the grievances and governance failings that have fostered recent unrest. Failing this, further delays will only make solutions harder to find and invite unhelpful recrimination and finger-pointing.

The November 2006 Comprehensive Peace Agreement (CPA) was never as comprehensive as its name implied, and it has been undermined by limited implementation and monitoring. Maoist discontent is partly a result of exaggerated expectations but has been exacerbated by the lack of effort on all sides to build genuine eight-party consensus and fulfil all parts of the peace deal. The mutual confidence that enabled the agreement to be reached had to increase to ensure its implementation; instead it has decreased in many areas, with parties unwilling to recognise their shared responsibilities to make it work. The ball is in the government's court, with the mainstream parties needing to address reasonable Maoist concerns, hold firm to democratic principles and take sensible steps to engage CA opponents.

The government and its constituent parties should:

- ❑ sustain efforts to bring the Maoists back on board;
- ❑ start nationwide electoral campaigning, on a party basis but also emphasising a common agenda of peace and constitutional change, recognising unambiguously that an elected assembly, not the appointed body some politicians have quietly sought, is the only way to guarantee the process' legitimacy;
- ❑ create a secure environment for free and fair polls by reaching cross-party consensus on security plans, engaging groups opposed to the polls in dialogue, and discussing the functioning of post-poll government and the CA, including how to guarantee roles for all stakeholders;
- ❑ develop mutually agreed mechanisms to implement the CPA and monitor parties' fulfilment of their commitments;
- ❑ take on security sector reform, with both short-term measures to boost local accountability and trust in the police and by moving forward discussion of longer-term plans, including the future of the national and Maoist armies;
- ❑ deal sensibly with Maoist fighters in cantonments, resolving disputes over allowances and facilities and building on cooperation in these areas and the now resumed combatant verification process; and
- ❑ tackle impunity (for example, acting on disappearances while starting a genuine consultation on broader transitional justice issues) and restore

trust in the judiciary (including by the Maoists stopping parallel people's courts), and in institutions such as National Human Rights Commission.

The international community should:

- support the peace process and the elections, including by giving practical help through monitors and reminding all political actors, especially the Maoists, that obstructing progress will cost them international legitimacy;
- offer development assistance only in accordance with the spirit of the CPA, which includes recognising the Maoists' party, the CPN(M), as a legitimate political actor (and part of the government, should it rejoin) and engaging it in donor programs, including in security sector reform and political training; and
- without raising expectations that it can resolve domestic political difficulties, be prepared to offer good offices to facilitate consensus if requested by the parties.

II. ON TRACK FOR THE ELECTIONS?

The government has consistently maintained that the constituent assembly elections will take place as scheduled.¹ However, a public which heard similar assurances in the run-up to the original June 2007 deadline has been understandably sceptical. The 18 September Maoist withdrawal from the government does not in itself make polls impossible but raises the likelihood of a further postponement or graver threats to the process. Maoist leaders insist they have not abandoned the peace plan but their new preconditions for participation (most notably the immediate declaration of a republic) suggest they would at least prefer a later date, if not to avoid elections altogether.

The Maoists (CPN(M)) had been the most notable among the governing parties² to cast doubt on the viability of the

polls;³ other politicians stayed on message in public while privately exploring options to convert the interim legislature into a constitution-drafting body, thus bypassing elections.⁴ Questions of poor security and rushed technical preparations have also dogged the run-up, compounded by the lengthy public holidays in October and November that will reduce the time to address pending issues.⁵

The Maoist withdrawal. The four remaining Maoist ministers (one, Matrika Yadav, had earlier quit) resigned from government on 18 September following the expiry of their deadline for the Seven Party Alliance (SPA) to meet their demands. The Maoists have not pulled out of the interim legislature – which is not currently in session – or of other cross-party bodies such as the joint cantonment monitoring committee. Their leaders remain in constant touch with other party representatives, and dialogue has not broken down. Both sides hold out the hope of a deal to restore eight-party consensus; the Maoists could also remain out of government but still contest the elections from opposition. However, the street protests whose launch they have announced could turn into a campaign to obstruct the polls.

The Maoist withdrawal was prompted by unhappiness with the implementation of the peace deal, pressure from their own cadres and a growing realisation that their electoral prospects may be poor. The steps they have taken to democratise their own behaviour and prepare for free and fair campaigning have been limited, and their own analysis has, belatedly, started to concur with independent estimates that they will trail the NC and UML when the votes are in. Negotiating for concessions behind closed doors may seem preferable to facing the likelihood of an unflattering popular verdict. If they can be persuaded to rejoin the SPA with a revised agreement, they have proposed reconvening the interim legislature to vote on a republic and endorse any other new arrangements. The amended interim constitution allows such a decision on a republic, if the king is seen as a threat to the CA, despite the parties' initial commitment to defer decision to that body's own first sitting.

Political will. By early September political will appeared to be strengthening, accompanied by practical campaign

¹ For an outline of the peace agreement and its challenges, see Crisis Group Asia Report N°126, *Nepal's Peace Agreement: Making it Work*, 15 December 2006. Recent Crisis Group reporting on Nepal includes Asia Reports N°128, *Nepal's Constitutional Process*, 26 February 2007; N°132, *Nepal's Maoists: Purists or Pragmatists?*, 18 May 2007 and N°136, *Nepal's Troubled Tarai Region*, 9 July 2007.

² The parliamentary parties that make up Seven Party Alliance (SPA) of mainstream parties are the Nepali Congress (NC); Communist Party of Nepal (Unified Marxist-Leninist, UML); Nepal Sadbhavana Party (Anandidevi, NSP (A)); Nepali Congress (Democratic, NC(D)); Janamorchha Nepal; Nepal Workers and Peasants Party (NWPP); and United Left Front (ULF). Following the Maoist entry into government alongside

the SPA, many press reports referred to an Eight-Party Alliance. However, there was no such formal alliance.

³ See, for example, "Nov poll more certain: Prachanda", *The Kathmandu Post*, 9 September 2007.

⁴ Crisis Group interviews, politicians and diplomats, Kathmandu, August-September 2007.

⁵ The ten-day Dasain festival falls in the second half of October and the slightly shorter Tihar festival in the second week of November. The May 2006 declaration of Nepal as a secular state has not affected government observance of Hindu holidays.

steps. Prime Minister Girija Prasad Koirala has repeatedly insisted there is no alternative to the scheduled elections.⁶ His party, the Nepali Congress (NC), has adopted a federal republican manifesto and, despite frequently stalled negotiations, has put itself in a stronger position by reunifying with the breakaway Nepali Congress (Democratic), known as the NC(D) and led by former Prime Minister Sher Bahadur Deuba. The Communist Party of Nepal (Unified Marxist-Leninist, UML) has long appeared most confident, having already finalised a policy platform and started canvassing voters. The Maoists, initially the most vocal CA advocates, have started retraining cadres to campaign peacefully but have also announced a program of strikes and street protests. Smaller members of the governing coalition have little influence but appear to be gearing up. Home Minister Krishna Prasad Sitaula (NC) has even suggested his party's decision to abandon the monarchy could enable all eight parties to present a common platform.⁷

Security. The fragile situation hampers a free and fair campaign and, should results be disputed, a stable post-election environment. There is little law and order, and police morale and capacity is low. Maoist efforts have focused on maintaining a parallel force, primarily the Young Communist League (YCL); the army, excluded from poll security and largely confined to barracks, has been making contingency plans, mainly focused on an attempted Maoist takeover. Although the CPA ban on its deployment remains official policy, senior party leaders have started talking up the benefits of involvement.⁸ Strikes and protests have disrupted daily life worst in the Tarai, especially its central and eastern districts. Three simultaneous bombings in Kathmandu on 2 September 2007 left three dead and more than two dozen injured and indicated that opponents of the peace process have the will and capacity to resort to extreme measures.⁹ The

government needs not only to guard against likely further incidents but also to refine plans for election-day security, which depend on recruiting tens of thousands of temporary police.¹⁰

Governance. As peace process progress slowed, the government faced a further erosion of confidence and capacity. Despite CPA commitments, there has been no agreement on reestablishing local government bodies; the reach of government at the village level has not increased, and in some areas, including much of the Tarai, has shrunk. Service delivery has been poor or non-existent, with much development work suspended, especially in the Tarai, where many remaining civil servants have been intimidated into fleeing.

Technical preparations. Nepal has a good track record of parliamentary elections but the CA exercise will be more complicated than past polls. Apart from the political and security issues, the mixed electoral system presents new challenges to administrators and voters. There will be twin ballot papers: one each for first-past-the-post and proportional contests.¹¹ Collecting and counting all votes will, even without other problems, probably take up to ten days.¹² Moreover, the complex rules designed to ensure representation of the marginalised, including women,

had implied that a seriously injured soldier, Chaturman Nepali, had been carrying one of the bombs as it detonated). "Army objects to media reports on Sunday blast", *The Kathmandu Post*, 7 September 2007.

¹⁰ Prachanda said the government should deploy the Young Communist League (YCL) along with the Armed Police Force (APF) to maintain law and order during CA polls, "Use YCL for poll security: Prachanda", *The Kathmandu Post*, 17 July 2007; "Maoists want to deploy PLA for CA elections", *The Kathmandu Post*, 3 September 2007; some called for army deployment. Lawmakers advised the government to hold the CA polls on the rescheduled date of 22 November even if the army had to be used for security. "MPs suggest mobilising army, PLA for elections", *The Kathmandu Post*, 31 August 2007. Speaking at the concluding ceremony of a Nepal Army coordination meeting, Chief of Army Staff Katuwal directed all divisional heads to remain alert for deployment if the government issues such an order. "Stay alert for poll: NA Chief", *The Kathmandu Post*, 8 September 2007; "Army offers help for CA poll", *The Kathmandu Post*, 10 September 2007.

¹¹ The system agreed in the interim constitution allowed for 240 members elected in single-member constituencies (requiring a redrawing of and increase in the 205 constituencies of the last House of Representatives), 240 elected by nationwide, party-based proportional representation, and seventeen members appointed by political consensus. Subsequent deals with under-represented groups may mean more appointees will be necessary, for example to meet the commitment that every one of Nepal's 59 recognised ethnic communities has at least one CA delegate.

¹² Crisis Group interviews, electoral experts, Kathmandu, August-September 2007.

⁶ "PM urges co-ordination among ministries for poll", *The Kathmandu Post*, 9 September 2007.

⁷ See "8 parties can share poll platform: Sitaula", *The Kathmandu Post*, 8 September 2007.

⁸ See, for example, "Army can be mobilised for polls: Nepal, Sushil", *The Himalayan Times*, 11 September 2007.

⁹ The bombings were carried out in three busy locations, Tripureshwor, Sundhara and Balaju, targeting bus stops and public transport. Two of the three killed were schoolgirls; many of the injured were students and children. Little known organisations, including the Tarai Army and Nepal People's Army, rushed to claim responsibility but it is unlikely that tiny fringe groups would have the capacity for fairly sophisticated, coordinated attacks. Despite promising to publish a preliminary report on the incidents, a 6 September police press conference revealed only that the attacks are, unsurprisingly, believed to be politically motivated. See "Blasts politically motivated: police", *The Kathmandu Post*, 7 September 2007. The army angrily rejected allegations that it had been involved (some newspapers

Dalits¹³ and ethnic groups, will make perfect implementation hard. Parties have to submit candidate lists for the proportional vote in advance but they will not be ranked, and once results are in, the final allocation of seats will be shaped by the need to fulfil guarantees for ethnic and regional representation.¹⁴

The mixed system, already a delicate and in places ambiguous compromise when enshrined in the interim constitution,¹⁵ has undergone several revisions in the electoral legislation and in response to community demands. Delivering on the deals that have been reached will require bargaining within parties and a degree of consensus between them. Against a background of political confusion, the determination of the Election Commission to ensure technical preparations are in hand and pressure parties to stick to the timetable has stood out.¹⁶ Chief Election Commissioner Bhoj Raj Pokharel and his colleagues have made clear they intend to run a tight ship, including by rigorously enforcing the electoral code of conduct.¹⁷

III. PARTIES AND POLICIES

The behaviour of all parties has been characterised by suspicion, partisan interest, lack of faith in the electorate

¹³ "Dalit" is the term preferred by "untouchables", who are at the bottom of the traditional caste hierarchy, to describe themselves.

¹⁴ Candidates included in the closed party lists are barred from also standing for seats awarded to the individual who polls the most votes in a constituency, so-called first-past-the-post (FPTP) seats. The electoral law specifies that lists must ensure proportional representation of marginalised groups. To accommodate seats promised to ethnic groups (and perhaps other communities still pressing demands) in deals concluded after the electoral act was passed, parties may agree to a further quota of appointed members to be selected after the polls.

¹⁵ The interim constitution was promulgated on 15 January 2007; for an analysis of the electoral system it adopted see Crisis Group Report, *Nepal's Constitutional Process*, op. cit.

¹⁶ The Election Commission has been working on several fronts: finalising the registration of parties and the design of ballot papers; managing voter education programs (including training, information events such as a mock election in Pharping, Lalitpur district, on 21 July to test the system and voters' understanding of it); authorising national organisations to engage in electoral monitoring; and coordinating with international monitors and donors.

¹⁷ The Election Commission published the code of conduct, which applies to political parties, their candidates, electoral officials and the media, on 19 August 2007. It sets campaign expenditure limits for candidates, bans opinion polls from the opening of candidate registration until the completion of the polls and restricts mass meetings and rallies to the hours between 7am and 7pm. Available at www.election-commission.org.np.

and distrust of consultation, extending to closed-door decision-making by leaderships and elites. The peace process has done little to address these problems, and even its many successes have hardly translated into popular approval or increased mutual confidence. The weakness in forging eight-party consensus has been exacerbated by poor discipline within most parties, with individual politicians making provocative statements and pursuing personal agendas in public. Civil society groups, which played a crucial role in the campaign against royal rule, have suffered from splits and personality clashes.

The governing parties have hinted at extending cooperation and consensus-based decision-making after the elections, and some representatives have started discreet discussions on what this might entail.¹⁸ At a minimum, the major parties will probably guarantee each other's main leaders an easy ride in first-past-the-post (FPTP), single-member constituencies. They may also address pre-poll anxieties by forging a common understanding on coalition government even if election results change the balance of power.¹⁹ The task of keeping the process on track is far from straightforward. In a political arena crowded with many parties, electoral constituencies, politically interested institutions such as the palace and army, powerful international players (in particular, India) and debilitating intra-party tensions, leaders constantly have an eye on other actors' positions and relationships and seek to retain flexibility. Policy-making, therefore, is always contingent, conditional and influenced by a wide array of variables.

A. THE MAINSTREAM PARTIES

Establishing a viable, reformed democratic system will be impossible without the mainstream parties. However, they have dragged their feet on many critical issues. Quick to lecture other institutions on the need to create a "new Nepal", they have done little to question their own attitudes and behaviour. Despite a shift in rhetoric, especially in recognising the need to be more inclusive, they have not set a good example. Mainstream party leaders' equivocal approach to the polls and peace process has had a corrosive effect on public confidence and political progress, giving

¹⁸ Political analysts suggest such inconclusive discussions have taken place. Crisis Group interviews, Kathmandu, September 2007.

¹⁹ UML leader Madhav Nepal suggests: "We can reach an agreement on [seat-sharing] not only with the Maoists but also with the NC since we need to move together until we achieve our objectives. The UML has proposed that the parties should agree to ensure that top leaders of different parties win the elections. The prime minister, also, has taken this positively". Interview, *The Rising Nepal*, 10 September 2007.

the impression of enjoying a return to power and being too comfortable to face elections.

The democratic parties are right to see their revival in the face of hostile armed forces (the army-backed king and the Maoists) as a victory. But they have been slow to acknowledge that they have to build on this by helping the Maoists join the mainstream and persuading the army it will benefit from democratic control. Understandable partisan interests have led some leaders to revel in the difficulties faced by a Maoist leadership under fire from its less accommodating cadres; the parties' own long-term interests depend on making a success of the peace process. This means not only forcing the Maoists to abandon violence, but working jointly towards a reformed mainstream that moves beyond the failed practices that cost the parties dearly in the post-1990 democratic period.

Congress. The Nepali Congress has faced concurrent challenges, principally the reunification of its two wings and decisions on central policy issues. Lurking in the background is the struggle for succession when its president, Koirala, already in very poor health, hands over the reins without an agreed heir. That the NC and NC(D) would reunite before elections was never in serious doubt. The process, however, was slow and tortuous. Both are top-heavy, with numerous leaders demanding accommodation in a reunified structure. Apart from the personal antagonism between Koirala and Deuba, the latter's designs on the succession alarm Koirala family loyalists and potential independent contenders. The reunification deal finalised on 25 September was based on a fine, but precarious, balancing of these factors.

On the most sensitive policy – the monarchy – Koirala's deliberately cautious approach may have paid off. Abandonment of the monarchy has been long enough delayed to leave royalists little time to challenge on the conservative end of the political spectrum, while still assuaging Maoist fears of a secret deal with the palace. However, opinion within the party is still divided – not just on republicanism, but on potentially more controversial issues such as federalism and secularism. Although the reunified party confirmed the republican line, key leaders remain unconvinced. The only surviving NC founding member, Krishna Prasad Bhattarai, played a critical role in reuniting the party but resigned from it on 26 September in protest at the abandonment of the monarchy. Whatever the platform position, individual CA delegates could still defy the party whip on votes. Meanwhile, Congress has yet to grasp the nettle of internal reform. The only party that can boast an uninterrupted commitment to multi-party democracy, it remains one of the least democratic internally.

UML. Leaders are confident their party machinery is in good shape: their cadres are organised, motivated and have

greater involvement in decisions than those of other parties. However, concern that a mainstreamed CPN(M) could eat into its centre-left support base has made its calculation of Maoist strength critical; they will want to go to the polls when the Maoists are weakest, even if that means postponement. (The alternative approach – a “grand republican alliance” mooted by the Maoists or a more limited seat-sharing deal – looks increasingly unlikely.²⁰) The frustration that pushes the UML towards a prompt election, however, results from its treatment as a junior partner in the government, often excluded from key decisions or overridden by the NC-Maoist combine. Even if polls are postponed, the UML will have come out of the pre-poll haggling looking more responsible and committed to the democratic process than its rivals and having won over many former doubters in the international community.

B. THE MAOISTS

Adjusting to the realities of their position has been hard for the Maoists. Leaders have had difficulty selling the compromises of the peace process to increasingly restive cadres; the cantonment of their armed forces has reduced their leverage and left them more vulnerable to the mainstream parties; and participation in government has brought only limited status and influence. They are frustrated that they are expected to transform overnight and fulfil every part of the peace deal, while other parties drag their heels on issues such as security sector reform. However, their own behaviour has often been the major obstacle. They have not dropped the idea of revolutionary change (although they say they want a “peaceful revolution”, they have not unequivocally renounced violence or dismantled their capacity for it), and they have retained the vision of parallel regimes, with separate approaches to security, local government and justice. Even if their prospects of winning power through the ballot box look poor, the Maoists can still make the state ungovernable – a threat they would prefer not to go through with but one which provides leverage at the negotiating table nonetheless.

The Maoists are still a disciplined, motivated and sophisticated political movement with the potential to win support for what is often seen as a fresh, populist agenda.

²⁰ UML leader Madhav Nepal has said: “The move to create a left alliance may make the NC suspicious towards the intention of the communists. Nepali Congress may suspect that the leftist forces are hatching conspiracy against democracy. The issue at the moment is to intensify the process of consolidation of republican forces. Later we can discuss about the type of republican set up after the election. ...At the moment, there is no possibility of unity between the two parties but we can come closer and work together. For this, the Maoists should create atmosphere and act accordingly”. Ibid.

But bold threats of a new uprising reflect insecurity more than strength. The movement faces considerable internal tensions (as the very public criticism of the leadership line at policy meetings indicated) but has limited options (as evidenced by the conditional endorsement of the peace process despite the frustration). Delay in the CA elections has not only undermined the original plan of riding a wave of post-people's movement popularity but has also allowed the other parties to consolidate and encroach on Maoist political territory. The CPN(M)'s next steps will be designed to counter this setback and to cement the movement's unity before and beyond elections. The party is determined to avoid succumbing to the splits that have weakened other rebel movements.

Equivocation over the polls – a flurry of contradictory statements has suggested indecision, even rejection – reflects the Maoists' awkward position. On 20 August, they published 22 preconditions for participation. The principle demands included immediate declaration of a republic, establishment of a commission on involuntary disappearances, a roundtable conference of parties and civil society (including representatives of marginalised communities), release of all detained Maoist cadres and a start to security sector reform. Some of these are points already agreed in the CPA but not implemented (such as action on disappearances and security sector reform); others are old elements of the Maoist agenda (the roundtable conference) or potential bargaining positions designed to pressure the other parties (the immediate republic declaration).

The preconditions have raised understandable questions about Maoist commitment to the elections. While not proving that the CPN(M) is trying to back out of the entire exercise, the withdrawal from government reflects both a deep-seated frustration with the process and a strong compulsion to play to the militant wing of the movement. The Maoist exit from government and proposed street protests will not necessarily derail the peace process but will further undermine the CPA, making it much harder to regain the political trust needed for progress.

For the Maoists, a workable compromise is still possible if agreement can be reached on a few critical issues: a solid cross-party commitment to a republic (preferably an immediate declaration but possibly a conditional guarantee); movement on the future of the PLA and state security sector reform; and the promise of some concrete socio-economic reforms, such as land reform. From the perspective of Maoist leaders, other demands, such as the headline call for a fully proportional electoral system, are in fact less important. A return to government is not inconceivable, but only if it is seen as part of a wider restructuring (including reallocation of ministerial portfolios and new nominees to fill them) rather than

a back-down and return to the status quo ante. In the meantime, Maoist leaders would probably be most happy if polls were postponed, and they had time to regroup and reinvigorate their political agenda, making the most of widespread disillusionment with the SPA's record in government. This is a risky strategy: they could instead find themselves taking the blame for blocking progress and with few new achievements to mollify internal critics.

C. ROYALISTS: REALISTS AND REFUSENIKS

The NC's decision to adopt a republican agenda makes the king's position tenuous but not yet terminal. Moderate royalist parties – the Rastriya Prajatantra Party (RPP), led by Pashupati Rana, and the Rastriya Janamukti Party, led by former Prime Minister Surya Bahadur Thapa – have lent critical support to the CA process, urging that the election should go ahead while cautioning that much remains to be done to create the proper environment.²¹ Others have adopted a more aggressive line, promising to fight any attempt to end the monarchy and to undermine the state's Hindu character. The king himself has had his public role further curtailed. Following the nationalisation of his palaces, he moved to a country retreat and has been prevented from appearing at religious functions over which he used to preside.²² For those determined to save the monarchy, stopping the CA election may become the only option. Some palace supporters are committed enough to use violence and loudly telegraph their desire to see a “democratic coup” sweep aside the eight-party government.

IV. THE SHAPE OF THE PEACE PROCESS

A. AN INCLUSIVE PROCESS?

Making Nepal's democracy more inclusive has become essential to the success of the peace process. This means increasing the participation of many groups who have been severely underrepresented in parties, government

²¹ RPP President Pashupati Rana has said elections must go ahead but has criticised the government's failure to ensure peace and security. “Republic before CA poll impossible: Paudel : Without republic, polls mere imagination: Dr Bhattacharai”, *The Rising Nepal*, 8 September 2007. RJP President Surya Bahadur Thapa has taken a similar line. “Thapa urges parties to follow pact”, *The Rising Nepal*, 12 September 2007.

²² For example, Prime Minister Koirala refused to give the king a security escort on Janmashtami, the Hindu god Krishna's birthday, and took his place at the main ceremony at Patan's Krishna temple on 4 September.

and national institutions – women, regional and ethnic communities, caste groups and others. Building more inclusive political structures is the task of the CA, but the need to secure representation in that body and keep key issues on the agenda has led to protest movements and demands.

1. Tarai

The most critical area remains the Tarai, the plains that are home to some half of the population.²³ The way in which long-standing grievances of plains-origin Madhesi communities were allowed to fester illustrated the general weaknesses of the major parties' handling of the peace process. Following an uprising in January-February 2007, it took months for the government to engage in serious dialogue with the most significant new political group, the Madhesi Janadhikar Forum (MJF).²⁴ Government negotiators concluded a 22-point agreement with the MJF on 30 August, offering measures such as compensation for those killed and injured in the uprising but also forcing the MJF to drop demands such as a fully proportional electoral system and to accept no increase in seats.

The deal with the MJF suggests the possibility of a mainstream consensus on moving towards the election but has also prompted serious disagreement among Madhesi activists. Several MJF central committee members opposed the deal (as did the CPN(M), despite having a representative on the government delegation) and have split from party leader Upendra Yadav,²⁵ while more extreme groups have continued violence and been joined by further small groups.²⁶ Following the deal, Yadav has spoken strongly in favour of the polls and has mobilised supporters, suggesting the MJF has a degree of organisation and resources. However, it is unlikely to be the only new player in the Tarai. Senior Madhesi in the mainstream parties may push ahead with plans to register a new regional party.²⁷

²³ For background see Crisis Group Report, *Nepal's Troubled Tarai*, op. cit.

²⁴ Talks were also held up by the fluidity of the Tarai situation, with no one – including MJF leaders – sure which parties commanded popular support.

²⁵ "MPRF 'ousts' Chairman Yadav", *The Kathmandu Post*, 3 September 2007; "21 out of 27 central members support Yadav. MPRF expels Biswas, three others", *The Kathmandu Post*, 7 September 2007.

²⁶ The most organised and influential groups, the two factions of the Janatantrik Tarai Mukti Morcha (JTMM), are reported to have suffered further splits; a handful of other groups, such as the Madhesi Tigers, have called strikes, held protests and carried out disruptive activities at a local level. On the major groups, see Crisis Group Report, *Nepal's Troubled Tarai*, op. cit.

²⁷ Informal discussions on forming such a party have been underway for several months but have been hindered by personal

2. Marginalised communities

Nepal's many ethnic groups have been pushing for ethnicity-based proportional representation with the National Federation of Indigenous Nationalities (NEFIN), an umbrella organisation representing some six dozen communities, taking the lead in pressuring the government. It demanded interim constitution amendments to commit to a federal republic based on ethnic autonomy, to remove the ban on ethnic political parties and to end discrimination against indigenous languages.²⁸ In the face of major parties' inaction, it submitted formal demands to government negotiators on 26 February 2007, calling for a round-table conference "to come up with an integrated solution and evolve common views on the issue raised by indigenous nationalities, Madhesis, dalits, women and other agitating groups".²⁹

Following a series of public protests and ten rounds of negotiations, a twenty-point deal was reached on 7 August.³⁰ The government agreed to make the 240 FPTP seats "proportionately representative", guaranteed that all 59 indigenous groups will have at least one CA representative (even if groups do not have a representative elected from either portion of the electoral system) and promised to establish a State Restructuring Commission. Further concessions included (often unspecific) commitments to recognise local languages, develop mechanisms for wider consultation on future policies and adopt international standards such as the United Nations Declaration on the Rights of Indigenous Peoples.

This deal reflects the pattern of the peace process: it was concluded as a private arrangement with one group whose representativeness is not unquestioned; many provisions were left deliberately vague; and there is little indication that it will be implemented. Indeed, the prime minister denied all knowledge of the agreement weeks

and political differences between the key individuals, and by senior politicians' hesitation about leaving established parties. Representatives of the group have approached the Election Commission to discuss their intention to register the new party; despite the passing of the registration deadline, the commission is likely to approve a new formation if it materialises. Crisis Group interviews, Kathmandu, September 2007.

²⁸ Press statement, NEFIN, 23 December 2006, at www.nefin.org.np.

²⁹ NEFIN also emphasised the need for a "full proportional representation system during the constituent assembly elections and a federal system of governance with the right to self-determination based on the principle of ethnic, linguistic and regional distribution in the interim constitution". Demands submitted to government talks team, 5 March 2007, available at www.nefin.org.np.

³⁰ An English translation of the agreement is at <http://nefin.org.np/content/view/231/1/>.

after his minister had signed it. More radical agitators (such as the Federal Limbuwan Rajya Parishad, Khumbuwan Rastriya Morcha and Tamsaling Autonomous Rajya Samiti) are still pressing for greater autonomy and threatening to oppose the CA process.³¹ Meanwhile, other disadvantaged groups – from Dalits to women of the Badi community, who have traditionally worked as sex workers – continue to fight for better representation.³²

3. Women

The conflict has given more prominence to women's issues but despite some organised campaigning, concrete achievements have been minimal.³³ The immediate challenge is to secure better CA representation and to put into practice parties' rhetorical commitment to women's rights. Electoral law guarantees significantly increased women's candidacies for the CA polls (one third of all candidates in both sections and half of those elected under the proportional section³⁴) but this alone may not translate into action on remaining issues. Women's groups and parliamentarians have been effective at joint campaigns on certain issues but their efforts have been undermined by fragmentation, political and institutional rivalries and (particularly in the large NGO sector) competition for funding.

The prospect of increased CA representation and a changed balance in the interim legislature following the CPN(M)'s appointment of 29 women among its 73 representatives³⁵ have given some momentum to women campaigners, although most are understandably sceptical of parties' will to transform structures. The conflict has changed perceptions of gender roles and social structures but even

the CPN(M) – which likes to see itself as in the vanguard on women's issues – has yet to grant women real decision-making power within its own structures. Various ethnic and regional groups, such as Madhesi and *janajati* women, have started campaigning to ensure a high level of women's participation and representation in the CA elections.³⁶

B. PEACE OVER JUSTICE?

The tension between the sometimes conflicting goals of peace and justice has not troubled the governing parties. Despite CPA commitments and lip-service to justice, political expediency has consistently taken priority. During the transitional period, the government's failure to address a widespread lack of confidence in the judiciary and to tackle the legacy of impunity has harmed its legitimacy.

There has been no progress on resolving the hundreds of cases of forced disappearances.³⁷ A draft parliamentary bill to establish a Truth and Reconciliation Commission served political leaders' interests by offering general amnesties but was universally condemned by human rights activists, who had not been consulted. The long-delayed appointment of new members to the National Human Rights Commission has also been criticised for breaching the Paris Principles on the independence of human rights watchdogs.³⁸

The Maoists cite a lack of faith in the judiciary as a reason for not disbanding their parallel justice mechanisms as promised in the CPA. They have maintained people's courts and supplemented them with YCL cadres, who have detained alleged criminals. Stalling on the verification of cantoned combatants has meant that underage military recruits (who are to be identified, then discharged) have yet to be released and rehabilitated. Fear of Maoist action continues to prevent many internally displaced persons (IDPs) from returning to their homes.

³¹ "Limbuwan, Khumbuwan Ready for Talks", *The Kathmandu Post*, 6 September 2007.

³² See, for example, "Badi women stage sit-in at ministers' quarters", Kantipur Online, 8 September 2007.

³³ For example, the Nepal Citizenship Act (2006) for the first time recognises maternal descent as a criterion for citizenship. "Citizenship through mom possible", *The Kathmandu Post*, 31 May 2006.

³⁴ The Constituent Assembly Members' Election Act (2007) provides for women to have 50 per cent of the 240 seats from the proportional representation system and to make up 33 per cent of candidates across the board. (In effect, this means that final representation in the CA could be as low as some 22 per cent, especially if parties assign women the most unpromising constituencies.)

³⁵ There are 57 women in the interim legislature – slightly less than one in five of the total membership. This still compares very favourably with past parliaments: the lower house has never had more than 6 per cent women members and the upper house has tended to have around 5 per cent. See "Unequal Citizens: Gender, Caste and Ethnic Exclusion in Nepal – Summary", DFID/World Bank, Kathmandu, 2006, p. 30.

³⁶ The Madhesi Women's National Assembly was held in Chitwan, 14-17 August 2007.

³⁷ The International Committee of the Red Cross estimate of outstanding forced disappearance cases stands at 1042. The CPA had committed the government and Maoists to reveal the whereabouts of disappeared people public within 60 days of its signing, a deadline that came and went with little action. On 1 June 2007 the Supreme Court called for a commission of inquiry but one has yet to be established.

³⁸ The Paris Principles refer to the "Principles relating to the status and functioning of national institutions for protection and promotion of human rights", endorsed by the UN General Assembly on 20 December 1993. They describe characteristics national human rights bodies must have to ensure integrity and independence and can be found at www.unhchr.ch.

C. SECURITY SECTOR REFORM

The future of the security sector is at the heart of the peace deal but the army has resisted discussion of any structural reform, and mainstream parties have been happy to defer the issue. Nepal Army chief Rookmangad Katwal frequently reiterates his institution's commitment to the democratic process but it remains autonomous, beyond any meaningful democratic control and deeply suspicious of politics from which it feels marginalised, its values threatened. Powerful international players, primarily India and the U.S., still see the army as the last defence against a possible Maoist takeover or collapse of government; their determination to guard against any immediate reforms has emboldened conservative commanders.

Although the chief of army staff reports to the prime minister, there are virtually no democratic control structures. The ministry of defence, never more than a rubber stamp for army decisions, is without a secretary and, given that the prime minister has retained the portfolio, without any effective ministerial oversight. Funds offered by one donor to improve infrastructure went unused, as the ministry declined to raise matching contributions. The National Security Council exists only on paper, and the CPA-mandated committee on security sector reform has only met once. One member from a mainstream party spoke of resigning; only the CPN(M) was enthusiastic about a donor's offer to provide technical experts to facilitate discussions.³⁹

Concerns about rushing into ill thought-out reforms are not fanciful. Given the political flux and weak security situation, there would be no benefit in destabilising the largest security force. Nevertheless, lack of progress on security sector reform, which is an integral part of a carefully balanced peace process, is proving a destabilising factor in itself. Restive Maoist fighters in the cantonments need assurance that their future is being secured, just as their commanders need reassurance that a basic understanding of the peace deal has not been abandoned. Equally, UNMIN's exit strategy depends on a successful process. Without it, there can be no escape from the halfway house of "arms and armies management", which would leave Maoist forces in limbo and, if they chose, able to reclaim their weapons and walk out of the camps.

While the army has realised that it may be better off less closely tied to the palace, it sees the CA process (unless it produces a Maoist defeat) as a serious threat to its interests. Successful elections would leave little excuse for further stalling on democratic reforms – including loosening the generals' lucrative grip on procurement contracts – and

increase the pressure to integrate Maoist combatants, while also reducing unsustainably large troop numbers. The army is unlikely to gamble its reputation on a risky political intervention but will protect its core interests. Should these also appear to coincide with protecting the monarchy, weakening the Maoists and still retaining international backing, many generals would be delighted to step forward.

D. NEW NEPAL OR MORE OF THE SAME?

Successful elections will only usher in the next stage of a difficult national transition. While all parties have adopted the rhetoric of "building a new Nepal", most are wary of making significant changes to state structures and national identity. More immediately, concerns about the post-poll balance of power affect their positioning and bargaining in the run-up to the election. Apart from the risk of voters reducing major parties' tally of legislators, a new distribution of seats could reduce rivals' incentives to cooperate and leave some parties out in the cold.

The electoral and constitutional processes both demand a high degree of mutual confidence among political actors as well as public buy-in. Trust should have been built following the CPA but in many areas it eroded instead; with the Maoist decision to quit the government it will be even harder to create a working atmosphere for the CA. Planning for the constitutional process is already weak in terms of accountability and monitoring mechanisms, with much depending on political consensus and day-to-day inter-party cooperation. Beyond the monarchy, discussions on questions such as the form and functioning of federalism, security sector reform, implementing secularism and land reform (especially in the Tarai) will all be sensitive and could prompt further divisions or walk-outs.

V. THE INTERNATIONAL ROLE

UNMIN. The UN mission has ridden out criticism from both the Maoists and their opponents but faces challenges in fulfilling its mandate as well as calls to extend its involvement in the political process. Even if the elections take place on schedule, it will almost certainly be extended, not least to continue the arms and armies monitoring role that no other body can perform. Neither India nor China is keen for any expansion of its responsibilities, although the incentive of seeing a quick, clean exit might suggest acceptance of a greater role in facilitating discussion of security sector issues. Despite public sniping (based largely on the perception that a sizeable budget by local standards is not reflected in immediate achievements), UNMIN has built and retained credibility with key political players.

³⁹ Crisis Group interview, Western diplomat, Kathmandu, August 2007.

With care, it can use this as leverage on areas within its mandate, while avoiding the parties' efforts to set it up as a potential scapegoat for problems of their own making. However, the difficulties of trying to fulfil its mandate while being unable to influence the political context that determines its prospects of success is likely to lead to some reconsideration of its role. In the absence of other neutral third parties and with deadlock on many central political issues, calls for the parties to accept UN good offices in facilitating some discussions may well become stronger.

India. Delhi has continued its strong support for the peace process. Its mounting frustration at political leaders' reluctance to push for the elections led Ambassador Shiv Shankar Mukherjee to issue an unusually blunt public reminder that there is no legitimate alternative.⁴⁰ A series of visitors, including politicians and diplomats, reinforced this message to some effect, despite complaints from both Maoists and royalists that India was throwing its weight around. Once the government was ready to put a deal on the table for the MJF, Delhi increased pressure on it and other Madhesi groups to join the electoral process. India's role has been based on a rare domestic policy consensus, and critics remain on the margins (partly because Nepal is rarely high on the public or political agenda).

However, its increasing efforts to micromanage political processes place it in a riskier position and threaten to undermine the constructive cooperation with other international players that facilitated the earlier stages of the peace process. Most external actors recognise its regional dominance and special relationship with Nepal but also expect it to justify its claims to an exclusive role by shaping a supportive, but not coercive, environment for Nepal's people and their representatives to shape the country's future. Following the 2005 royal coup, it met these demands well but it cannot rely solely on the credit it accrued then if its advice on current challenges moves beyond legitimate neighbourly concern without helping to remove roadblocks.

Diplomats and donors. Of other players, only the U.S. has been both vocal and partisan. While stating support for the peace process, it has funded serious programs on security sector reform and political party training that exclude the CPN(M) and suggest little respect for the letter or spirit of the peace agreement. However, U.S. diplomats hint that their position is not rigid, privately recognising that the Maoists are not the only force

that needs to change behaviour.⁴¹ China has, as usual, scrupulously backed the government of the day (not batting an eyelid at the inclusion of formerly shunned Maoists), while quietly working to increase its contacts and influence across the political spectrum as well as in commercial and cultural fields. Its calm reaction to the democratic transition has helped it gain in reputation while carefully remaining above the day-to-day fray.

Development assistance is at the heart of most other international relationships, and the transition has presented awkward choices. Donors have been reluctant to write blank cheques to the government as long as delivery mechanisms and accountability are severely compromised. But most would like to use quick-impact assistance to help shore up the legitimacy of the political process, which is hard to do by bypassing government. The one area where there has been consensus and constructive planning is on election monitors. Although there will be some national monitoring capacity, there is widespread domestic consensus that a serious international presence is needed for a free and fair environment. Successful polls would move Nepal one step further along the conflict-to-peace continuum but not mean business as usual for development. Donors will need to be ready to adjust their priorities and practices if Nepal's political leaders do agree on restructuring the state and reshaping politics.

VI. CONCLUSION

None of the major parties has attractive alternatives to sticking with the peace process, but unhappiness over the concessions it involves has weakened political will and bolstered the determination of some groups to disrupt that process. The Maoist walk-out from government is only the most visible of many underlying problems. If popular expectations were decisive, they would almost certainly ensure that elections go ahead and all parties bring their behaviour into line with rhetorical commitments to transform the national agenda. However, most political leaders are only responsive to public pressure when confronted with mass protests or violence. In the absence of such direct pressure, their delaying tactics and taste for brinkmanship, however skilfully played, keep the prospect of failure uncomfortably close. Some further delay in the CA elections may just be survivable but there is no viable alternative plan; other forces waiting in the wings – be they politically ambitious army officers, more belligerent Maoist commanders or a ragtag collection of local armed groups – would have little concern for democracy or peace.

⁴⁰ The ambassador's comments were delivered at a ceremony to mark India's Independence Day. See "Indian envoy stresses the imperative of holding elections on time", nepalnews.com, 15 August 2007.

⁴¹ Crisis Group interviews, Kathmandu, August 2007.

Free and fair elections would be a major boost for the peace process and the legitimacy of the parties. But while they might cap the first phase of post-conflict transition, their real significance would be as the starting point of a difficult constitutional process that will have to consolidate peace while reshaping national institutions and building long-term stability. Whether polls happen on schedule in November or are postponed, the need to address popular demands for change will not go away.

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